MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 10, 1969

Meeting was called to order at 2:45 P.M. by Chairman Torvinen. 2-49

PRESENT: Torvinen, Swackhamer, Bryan, Fry, Prince, Reid, Kean, Lowman, Schouweiler.

MR. TORVINEN: This is the time set for a hearing of a number of bills having to do with criminal offense: AB 174, AB 183, AB 344, AB 456, AB 463, AB 489, AB 340 and SB 219.

AB 174: Permits juvenile traffic offenders to be tried in justice's court or municipal court.

ROBERT SOHRT: Director Wittenberg Hall: What is the court going to do? If the judge orders a fine or something what provision is made to see that this is carried out?

MR. TORVINEN: The only provision for this is contained in the bill itself.

MR. SOHRT: Jurisdiction would be removed from the District Court except for appeal cases.

MR. TORVINEN: Under recent Supreme Court decisions, there is the possibility of juveniles having attorneys appointed to represent them before the juvenile courts.

MR. SOHRT: It has happened, but not very often.

MR. TORVINEN: Who handles these now?

MR. SOHRT: Mr. McClosky handles some of them but I do most of them myself. I make most of the decisions. Some are handled otherwise. I can't see the municipal judge having to parade a 14-year old kid before him because he was not wearing a helmet or goggles or something or for carrying a passenger. What is the purpose of it?

MR. RAGGIO: I think he has a point. The theory behind the bill, as I understand it, is if the State has got to license people of 16 to operate a motor vehicle, we are giving them the same privilege as an adult and they ought to bear the same responsibility. The objection can be recognized and taken care of by making it applicable to those of licensing age. Any of those persons can be ordered to submit to a traffic education course under the auspices of the Police Department. There are many ways this can be brought to bear on the 16-year olds and over. Those under that age should be handled by the juvenile authorities. If they are going to be allowed to handle these dangerous automobiles, they will have to bear the responsibility.

The district attorneys are in favor of this.

MR. TORVINEN: Excluding the 14-year olds?

MR. REID: 16-year old people driving automobiles are just as dangerous as the ones older.

MR. TORVINEN read a letter to the committee from Clinton Wooster, Reno City Attorney. (Copy attached). 2-50

MR. TORVINEN: Mr. Wooster opposes the position of AB 174. He says as drafted it will not work and even if amended he would oppose enactment because you cannot put a juvenile in the city jail and therefore have no remedy. If tried and convicted in municipal court they cannot collect a fine. He would favor leaving NRS 62.083 as it is.

MR. RAGGIO: The procedure would the same as before this became law. It would be handled on a fine basis. I can't imagine how they would be handled any differently.

MR. REID: I understand that Nevada is the only state in the union that has a separate court for their juveniles.

MR. RAGGIO: I don't know of any other.

We have to reach the problem of the younger driver.

MR. REID: Having been a city attorney, I can see why Mr. Wooster is not in favor of this, but I don't know if that is a good enough reason not to do it.

MR. RAGGIO: By and large, the young driver offender evidences the attitude that he is not too imposed upon by repeated offenses of traffic laws. I just know what I hear. It doesn't make much of an impression upon them. They can do as much terrible damage to people and property as the older driver and they should know they have to bear the same responsibility. I think they should start right here being responsible. The theory has merit. We would have to work it out as to procedure. Now, it is a continual probation type of situation for them.

MR. TORVINEN: The point is they can't put juveniles in jail or enforce fines in the ordinary way. The problem is an available civil remedy.

MR. RAGGIO: Against a minor?

MR. TORVINEN: We must have methods for collection of fine and garnishment if you want to go that way.

MR. RAGGIO: Fines are not imposed, are they?

MR. SOHRT: It has been done but is not common practice.

MR. BRYAN: The juvenile division in Clark County more than defrays the cost of the administration.

MR. TORVINEN: The question was raised of other states having these procedures. Are you familiar with any of the counties?

MR. SOHRT: California uses fines quite often.

MR. REID: Do you know of any states having separate facilites such as ours?

MR. SOHRT: I don't know of any.

MR. SOHRT: I agree with Mr. Raggio. They should assume the same responsibility but a fine is not always the best answer to this. Sometimes yes and sometimes no. If allowed to choose, they will always take the fine rather than lose their license to drive. 2-51

MR. TORVINEN: Do you think that you revoke or suspend licenses more readily than the municipal courts or justice's courts in Washoe?

MR. REID: You could suspend them easier. In municipal court there are guidelines to follow. Also, they are graded by the point system.

MR. BRYAN: Juvenile Courts are not guided by them at all.

MR. TORVINEN: What if we tied in the point system and required juveniles to report to the Motor Vehicle Department the same as anyone else?

MR. SOHRT: Generally speaking, depending upon the parents, we recommend suspension of license quite often. We are not naive enough to think that all those suspended are not driving.

MR. TORVINEN: What about a second offense?

MR. SOHRT: He will have to go before the judge.

MR. BRYAN: There is a strong court order in the District Court. They work up a complete transcript on them and then assign to a Probation Officer. They have to report back to the court, etc. This is not done by the Traffic Master.

MR. RAGGIO: One very good feature of this bill: In any case, if the parent or guardian requests it, the matter is referred back to the Juvenile Court. This brings the parent in and he should be interested in and responsible for the errant younger driver.

MR. LOWMAN: In a previous meeting, we were discussing the possibility of requiring the parent to appear.

MR. SOHRT: I still require this.

MR. BRYAN: I agree with Zel. This is a very good idea.

MR. TORVINEN: We will go to AB 183. This has to do with second conviction within ten years.

AB 183: Prohibits probation for felon convicted more than once.

MR. RAGGIO: I would like to give you the position of the State District Attorneys Association. We have long felt the need for some limitation on the Court's abusing the power of granting probation. We are not achieving uniformity in the application of parole. The application was to be for the first offender to be able to live in society and prove his worth. Nothing good is being accomplished by granting probation to the second, third, and even the fourth-time offender. This is true even on the State level.

This is meeting the problem more realistically. It doesn't deny probation to the first offender. We think we should serve notice in this

state that the person who has been convicted and thereafter transgresses knows he will be punished this time. I believe ten years is a realistic approach.

PHILLIP HANNIFIN: Chief Parole and Probation Officer: I think we should specify in this bill that it applies to certain kinds of offenders. I would be in full agreement with Mr. Raggio for those with prior conviction of a violent act or sex offense or narcotics. These are particularly heinous crimes against society. I diverge from Mr. Raggio when it comes to property offenses.

Your typical alcoholic forges checks to support his habit. He may write a whole string of them on one binge. You get them dried out and they are fine fellows but when they get back in the world and their supervision is terminated, back they go again. This type of offender endangers society much less than others.

I want you to be aware that in 1967-68, the State Probation Department did a little over 600 pre-sentence reports. 360 were granted probation. About half of them had a prior felony within a 10-year period. Under this, they would have been sent to jail. It would have cost the State $140,000 for one year's confinement. We would have to build additional facilities to handle this kind of a load. Probation, over the years, has been an effective and economical remedy for for this sort of crime.

We have to understand that the person who is granted probation and completes it in good order has been successful, even though later he may commit another crime.

MR. LOWMAN: What figure of recidivism do you use?

MR. HANNIFIN: There is no solid figure on recidivism. There cannot be because there is no central source for compiling figures as relating to probation. During this last year, 80% were successful in completing their probation. Only 20% were brought back to court for violation of their parole.

Mr. Raggio said this is being abused, probation. Last week we had three cases where a man went before the District Court Judge with previous felonies and recent prison and was again granted probation. It is asking a lot, but maybe it could be worked so the judge could not grant probation unless the prior record was favorable.

We had a case recently where a woman was given probation, without even having her previous record sent for because the attorney who represented her said he had known her for 25 years. This was not faulty probation. It was a case where the attorney specifically misrepresented his case. A lot of things come into play. This may be unnecessarily restrictive.

MR. BRYAN: Was this called to the judge's attention? (Yes). It seems to me this would be a case for complaint against the judge.

MR. TORVINEN: Here again is the thing we run into daily, this hard cases and bad law thing. We see someone not doing their job and we lock it in with a proposed statute and I am not sure this is always a good thing.

MR. HANNIFIN: I am not entirely out of sympathy with this bill. I just want to point out some problems with it.

It does have some weaknesses.

MR. RAGGIO: I am almost always in agreement with Phil, but something has to be done to correct this inequity. Our property offenses are our most serious offenses.

Our Court calendar revolves. It will depend upon what month the criminal cases come in. It should be established. Crimes against property are the biggest problems our cities and communities have. Costs of burglary, larceny, and so forth. If probation is to be usable, we must establish what are good probation risks. If these people know they are to be dealt with in this way, we might stop some of them.

MR. TORVINEN: Would it be an invasion of the judicial to say that with a second offense within ten years and an unfavorable record the judge could not grant probation?

MR. RAGGIO: When you impose any restriction on judicial discretion it would run into that.

MR. FRY: Could we specify some particular crimes as the bad checkwriter?

MR. RAGGIO: Nobody gets more breaks than the bad checkwriter. When a person goes to prison for this offense, he has been given every consideration. We go the limit with these guys.

I would have no objection to enumerating some of these.

I think we made a mistake when we took robbery out of the nonprobationary offenses. There should be some punishment.

MR. REID: Maybe this might be an answer and make everybody happy. Shorten the period of time. Rather than 10 years, make it something less.

MR. RAGGIO: If you do that, I would suggest five years from the date of conviction or release from confinement, whichever is sooner.

MR. BRYAN: What if the statute locks you in? How about a man who commits a criminal offense in 1965 and thereafter leaves the jurisdiction and is apprehended in another state and does a prison term of five to six years? Then he is released and comes back to Nevada. Many would recommend probation under these circumstances because he has done confinement.

MR. HANNIFIN: The theory behind that is this: If a person committed a series of offenses here and then serves time in another state, the theory is that he has been rehabilitated. If he is on the way to becoming a good citizen, then should we take him and re-commit him?

MR. RAGGIO: I can't understand how somebody can escape from prison and then be put on probation for escape from prison.

One condition of probation is that you don't associate with felons.

MR. LOWMAN: One reason I went to work to introduce this bill is that I saw figures which led me to believe we were not really rehabilitating

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anybody.

MR. RAGGIO: FBI studies over the last five years have shown there is not much success as far as repeating offenders are concerned.

MR. HANNIFIN: The problem with all these figures is you can prove almost anything you want to by juggling the figures.

MR. TORVINEN: Any other suggestions as to how we are going to solve the problem of making it too inflexible?

MR. RAGGIO: I would suggest for subsequent offenses the time be five years from conviction or release, whichever is sooner.

MR. BRYAN: I am thinking about a separation of offenses. It might be his first three offenses, all together.

MR. RAGGIO: It could be if the offenses were incurred within a certain period of time. We must do something to control the court.

MR. HANNIFIN: If there has been conviction in the first five years we just don't recommend probation. If they have a good track record that is one thing, but if they don't we should just not tolerate them.

MR. REID: What is the experience you have had with the judge following your recommendations?

MR. HANNIFIN: They follow them, except in about 17% of the cases. It is a known fact that probation officers tend to be more punitive than judges.

MR. REID: There would be people who would say that would not be very harsh.

MR. RAGGIO: What about the repeat offender? Do the judges follow your recommendations on those? They do not in Washoe County.

MR. HANNIFIN: There is something in one of these bills which concerns arrest records, the pattern of behavior over a period of years. This tells us a lot. We pay close attention to this pattern of behavior in our recommendations.

AB 344: Authorizes judgment of acquittal in criminal cases.

MR. RAGGIO: I am opposed to this bill. May I explain to the introducers why I am opposed? I have seen cases where this could have been a real abuse of the judicial process. Under the existing criminal procedure the judge may direct or advise the jury to return a verdict of acquittal. They may not heed this. We had a case like this. An attorney charged with subornation of perjury wherein the judge advised acquittal. The jury ignored this and brought in a verdict of guilty. There was a motion for a new trial but the judge denied it. But there was still the right of appeal.

If the jury granted acquittal under this law, there is nothing the court can do about it. It is a dangerous thing. I don't know the reason or

purpose for the bill but I think it would be a sad departure from present procedure. 2 55

MR. TORVINEN: What could we put in there?

MR. RAGGIO: Nothing. It would be double jeopardy.

MR. BRYAN: There are two theories on jeopardy.

MR. RAGGIO: The only time jeopardy does not attach is when there is a mistrial.

MR. BRYAN: I am not sure I agree. I think we have remedies that would be available to the district attorney's office.

MR. RAGGIO: It would not be acceptable. I don't see why we should take away the function of the jury. This would be taking the case away from the jury. If there was an appeal, it would have to be tried all over again.

MR. BRYAN: In 1967 we accepted practically all of the Federal criminal Procedure except this.

MR. RAGGIO: No, we did not take nearly all of them.

I can't understand the concern of the introducers for such a statute.

MR. FRY: I have had cases in which they have received a new trial. The fellow puts up his bail and waits his year. It just sits there. Your office has decided in its wisdom to do nothing about it.

MR. RAGGIO: You can solve that in another way, cutting down the time.

MR. BRYAN: Sometimes the district attorney will insist on continuing the trial process when there is no legal evidence for it. The judge has ruled the evidence is not acceptable, is inadmissible. With that ruling a conviction is impossible to obtain, yet the district attorney will go on with the trial for another two days with all the costs and with no possibility of a conviction.

MR. RAGGIO: In such a case we would move to dismiss it. What could we do?

MR. BRYAN: This isn't always done. The jury, of course, returns a verdict of acquittal.

MR. RAGGIO: In balancing of these inequities, isn't it better for that to go on and the man acquitted than for the guilty man to go free? The defendant has the remedy. He can ask for an advisory verdict but the jury doesn't need to return it. The State doesn't have to go back and try it all over again with a new jury.

AB 456: Provides for expungement of certain criminal records.

MR. TORVINEN: During testimony from several district attorneys there was some question about expungement of records in certain cases. Because of that, Mr. Kean had this legislation prepared.

MR. RAGGIO: We indicated our feeling as far as our Association was concerned. There is not much feeling among us against it. However, I would suggest this bill be given some study before you adopt it, even if it has to go until the next session. I am concerned with how much effect it might have on collateral matters which I can't pick out of the air right now. I am thinking of civil rights and background checks for security positions and so on.

I would like to throw out a word of caution. There is merit to the thought but I am a little afraid of it.

MR. KEAN: A man with a record doesn't have too much to lose with another offense, but a man whose record has been cleared could not want another record.

MR. RAGGIO: I am not opposed to this theory. I just want to see what ramifications it might have, to be truthful.

MR. HANNIFIN: I have an objection to section 3, line 21. (Quoted) I find the use of arrest records indispensable in deciding about people, & in trying to investigate and issue judgment regarding the character of individuals. This legislation would restrict me in doing that.

Two to three pages of crime arrests would be very significant. That particular section, from my point of view, is objectionable.

MR. FRY: What if we put in this the provision that upon the request of your department the judge may order the records opened, as is done in adoption cases.

MR. RAGGIO: Then are you really giving expungement? I would suggest we make this legislation one of the items on the agenda for the Administration of Criminal Justice Study.

California has a limited expungement.

MR. HANNIFIN: We do have expungement now, to a limited degree. When probation is served, the guilty record can be set aside. After the person is free and clear for five years, the court may issue a certificate of good conduct and restore to the man his civil rights. These rights are limited, I agree, but they are in a way an expungement.

MR. FRY: The record will just show arrest, but you won't know what disposition was ever made of the case.

MR. RAGGIO: You can never change the FBI's rap sheet.

MR. KEAN: I am thinking about the situation where a guy can't get a job because of a record but maybe has been good for 15 to 20 years. We deny him a job and it costs the State a lot of money to help him on welfare.

AB 463: Authorizes judicial consideration of earlier time served when imposing sentence.

MR. TORVINEN: This says the judge when he imposes sentence can consider time already served. I don't know just what that means in determining sentences.

MR. HANNIFIN: We have a man serving time in the Nevada State Prison for Assault with Intent to Kill. He served 105 days, then asked for a new trial. He was back in the prison. He then asked for credit for those 105 days. The judge in Clark County told us we would have to give him credit for them. I am not sure the judge is right. I have taken it to the Supreme Court.

MR. BRYAN: Some courts have held that this is consitutionally required.

MR. TORVINEN: There was a recent Supreme Court Decision in this field but I can't recall what it was.

MR. HANNIFIN: If a man serves 90 days in the county jail before being sentenced, do you then give him credit for the time served? The judges do not give this credit generally.

MR. SWACKHAMER: "Earlier conviction has been held void." What does that mean?

MR. BRYAN: The decision was reversed, possibly. The fellow may be guilty but errors committed during the trial may be so outrageous that a retrial is called for.

MR. HANNIFIN: A man assaulted and burglarized a place. The judge threw out the assault, then they come back and charged him with burglary. In the meantime, he had served 105 days.

MR. BRYAN: I don't think the language should be "shall consider", if I interpret the intent of this bill correctly.

AB 489: Provides for motion to increase bail.

MR. BRYAN: I move Do Pass AB 489.
MR. LOWMAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

AB 340: Provides for supervision of minors on parole and probation beyond their minority.

MR. REID: I am not too impressed with this. I wonder if we could get Mel Close to come in and tell us about it.

MR. BRYAN: He may not favor because of the cost involved.

MR. LOWMAN: About AB 205 and AB 390: If we don't get AB 390 we had better keep AB 205 just as it is. Otherwise, there is no place to put 205. We decided we should report 205 out as is but put its provisions into 390. If 390 passes we drop 205.

MR. SWACKHAMER: We must amend 205 then to comply with the requirements for Federal money.

MR. KEAN: At this point what you want is Do Pass 205? (Yes).

MR. SWACKHAMER: We have POST and Criminal Planning, but neither of these may get out of committee on Ways & Means. Mr. Hannifin and Mr. Nevin prefer 390 but worry about whether Ways & Means will finance it.

AB 390, even if not funded, will still be there to help us get the Federal funds. 2-58

MR. LOWMAN: We have agreed to go to the Senate and to the Ways & Means Committee and try to sell the major package.

MR. LOWMAN: I move Do Pass AB 205.
MR. BRYAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. SWACKHAMER: I would suggest that AB 205 has to be re-referred to Ways & Means.

MR. TORVINEN: All in favor of re-referring to Ways & Means with a Do Pass recommendation, say Aye.

MOTION CARRIED UNANIMOUSLY.

MR. FRY: About AB 489, line 60: I would ask the committee to reconsider the amendment that notice be sent to counsel, rather than notice to defendant and his attorney.

I move this amendment.
MR. REID: I move to also change word "and" to "or".
THE MOTION ON THESE TWO AMENDMENTS CARRIED UNANIMOUSLY.

AB 340: Provides for supervision of minors on parole and probation beyond their minority.

MR. TORVINEN: Shall we leave this hanging in limbo? We should have had Mr. Hannifin give us his views on this because he has been on both sides of this, the juvenile and the adult offenders.

(It was agreed to wait on AB 340).

SB 219: Provides for interstate transportation of prisoners. Cost, none.

MR. REID: I move Do Pass SB 219.
MR. KEAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: Let's set some meetings for evenings next week and that will be it. We will set Tuesday, Wednesday and Thursday, March 18, 19th and 20th at 7:00 P.M. Room 43. (So decided).

Mr. Fry and Mr. Bryan said they would be absent on the 19th and Mr. Lowman said he would have to be absent on the 20th.

MR. TORVINEN: AB 268 is off the board.

MR. LOWMAN: I don't think we ought to look at that. Do you agree with the philosophy of sending it in here where we have five attorneys?

MR. TORVINEN: Since the Arizona decision we just about have implied consent anyway, or finding with the officer.

MR. KEAN: As I read this bill, I think it is a good escape for any of

you that drink. 2-59

MR. TORVINEN: I believe the Schmerber case says extraction of blood has to be taken under hospital circumstances.

MR. KEAN: I read part of the bill. The person suspected can choose the person he wants to administer the test.

MR. FRY: That is already in the law.

MR. LOWMAN: Can he then confer for an hour or more in order to delay until he is sober before having the blood extraction?

MR. TORVINEN: Would we want to put it back in this committee? It is off the board.

ON THE VOTE, THE DECISION WAS NOT TO BRING IT BACK TO JUDICIARY COMMITTEE.

AB 176: Provides for detaining in jail certain juveniles charged with committing offenses.

MR. TORVINEN read the amendment to section 4, page 2, line 8. It deletes lines 8 through 16 and inserts the words "the official in charge of any detention" etc. amendment 1676.

MR. LOWMAN: I move Do Pass Amendment 1676.
MR. REID: I second the motion.
MOTION CARRIED, with Mr. Fry voting NO.

MR. SWACKHAMER: There is another piece of legislation here from George Franklin. He would like committee introduction.

MR. REID: I move committee introduction for BDR 1-1696. (A.B. 664)
MR. SWACKHAMER: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: We have another BDR here having to do with good time credits under determinate sentences.

MR. BRYAN: I move committee introduction of BDR 16-1539. (A.B. 667)
MR. SCHOUWEILER: I second the motion.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: We have another BDR which was requested by Judge Mowbray. It permits a magistrate to appoint counsel.

MR. REID: I move committee introduction of BDR 14-1769. [14-1796] (A.B. 666)
MR. BRYAN: I second.
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: We also have BDR 14-1805 requested by the friendly bailsman.

MR. REID: I move committee introduction of BDR 14-1805. (A.B. 665)
The motion was seconded.
MOTION CARRIED UNANIMOUSLY.

Meeting was adjourned at 4:30 P.M.

OFFICE OF THE CITY ATTORNEY

2.60

CITY HALL
RENO, NEVADA

CLINTON E. WOOSTER
CITY ATTORNEY

March 6, 1969

FRANK W. SHATTUCK
ROBERT L. VAN WAGONER
JOHN-DOUGLAS ROBB
ASSISTANT CITY ATTORNEYS

Assemblyman Roy Torvinen
Nevada State Legislature
Carson City, Nevada 89701

Re: A. B. 174

Dear Roy:

Thank you for your letter advising me of the hearing on A. B. 174 concerning trying juvenile traffic offenders in Municipal Court. I have done some research on the Bill including discussion with our Juvenile Division at the Reno Police Department. I will be in a City Council meeting on March 10 and, therefore, may not be able to appear at the hearing. I am opposed to the passage of A. B. 174 for two reasons:

1. As presently drafted the Bill will not work; and

2. Even if amended to make the Bill workable I would oppose its enactment since as I read the law on juvenile offenders the City could not put a minor in Municipal Jail and, therefore, we are without an effective remedy.

First, A. B. 174 provides that juvenile traffic matters shall be referred to the Juvenile Division of District Court and then A. B. 174 repeals N.R.S. §62.083 which gives the Juvenile Court power to dispose of juvenile traffic offenses. I don't think you can provide for referral of this matter to Juvenile Court and at the same time repeal the power of Juvenile Court to handle the matter.

Secondly, Chapter 62 of N. R. S. prevents a minor from being imprisoned; therefore, if a minor is tried in Municipal Court and fined there is no way that we can collect such fine. A. B. 174 would put back into an already congested Municipal Court a problem, I believe, that cannot effectively be solved in that Court. I would favor leaving N.R.S. §62.083 as it is.

Thank you for giving me the opportunity to comment on this particular Bill.

Very truly yours,

CLINTON E. WOOSTER
City Attorney

CEW:vc